PUBLIC PROSECUTOR

v.

BUYONG BIN MOHD JURIT AND ANOTHER CASE

HIGH COURT, KOTA BHARU
DATO' ARIFIN B. ZAKARIA JC
[CRIMINAL TRIAL NO. 47-17-90/47-18-90]

INTERPRETATION OF STATUTES : Offences under ss.3&3A of the Firearms (Increased Penalties) Act 1971 - President of Sessions Court transmitting case to High Court - Whether President had jurisdiction to transmit case - Whether President was right in making the order of transmission - Interpretation of s. 11(1) of the Firearms (Increased Penalties) Act 1971.

The accused were charged in the Sessions Court with offences under ss. 3 & 3A of the Firearms (Increased Penalties) Act 1971 (the Act). The learned President of the Sessions Court, purporting to act under e. 11(1) of the Act, made an order transmitting the cases to the High Court. Thequestionthataroseatthisstagewas whether the learned President was right in making the said order of transmission in connection with which the Court was called upon to interpret s. 11(1) of the Act.

Held:

[1] A statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. Construings. 11(1) of the Act, in the light of s. 10, it would appear that the requisition under the said s. 11(1) only relates to cases triable by the Subordinate Court.

[2] An offence under ss. 3 or 3A of the Act, which is triable exclusively by the High Court, is outside the scope of s. 11(1). Consequently the g special provisions relating to transmission of a case to, and trial by, the High Court as provided by the said s. 11 have no application to a case which relates to an offence under ss. 3 or 3A of the Act.

[3] The order of the learned President transmitting the case to the High Court was consequently a nullity for want of jurisdiction.

[Order qunshed. Cases remitted to Sessions Court to be proceeded with in accordance with the provisions of the Criminal Procedure Code].

Cases referred to:

Canada Sugar Refining Co. Ltd. v. R. [1898] AC 735 (**refd**)
Attorney General v. Brown [1920] 1 KB 773 (**refd**)
PP v. Oladatun Lukmanu Umaru & Ors. [1990] 2 CLJ 10261 [1991] 1MLJ187 (**refd**)
Davies v. Davies Jenkins & Co. Ltd. [1967] 2 WLR 1139 (**refd**)

Legislation referred to:

Criminal Procedure Code
Dangerous Drugs Act 1952, ss. 39B(1)(2), 41A(1)
Firearms (Increased Penalties) Act 1971, ss. 3, 3A, 10(1)(2), 11(1)

JUDGMENT

Arifin b. Zakaria JC:

These two cases, which relate to offences under s. 3 and s. 3A of the Firearms (Increased Penalties) Act 1971 (the Act), were transmitted to the High Court by the learned President of the Sessions Court, Kota Bharu, purportedly acting under s. 11(1) of the Act. The preliminary issue raised at this stage is whether the learned President was right in making the said order of transmission. The answer to this question turns on the interpretation of s. 11(1) of the Act, which for convenience is set out below:

> 11(1) **Where any case in respect of an offence under this Act is required by the public prosecutor to be tried by, the High Court,** the accused person shall be produced before the appropriate subordinate Court which shall, after the charge has been explained to him, transmit the case to the High Court without holding a preliminary inquiry under Chapter XVII of the Criminal Procedure Code, and cause the accused person to appear or be brought before such Court as soon as may be practicable.
> (Emphasis added).

The learned Deputy Public Prosecutor contended that, on a literal interpretation of the said section, it clearly covers all offences under the Act, including those under ss. 3 and 3A of the Act, in respect of which a requisition had been issued by the public prosecutor. This seems to be the impression that may be derived from the said section if one were to read the section in isolation. But, "a statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute" (See *Canada Sugar Refining Co. Ltd. v. R* [1898] AC 735 per Lord Davey at p. 741). Similar

sentiment was expressed by Sankey J. in Attorney *General v. Brown* [1920] 1 KB 773 where at p. 791 he said:

> ...in construing an Act of Parliament it is, in my view, legitimate to consider
> (1) the state of the law at the time the Act of Parliament was passed and the changes it was passed to effect;
> (2) the sections and structure of the Act of Parliament as a whole.

In this connection, the relevant section to consider, in my view is s. 10 of the Act, which is in the following terms:

> 10(1) Notwithstanding any other written law to the contrary, **a Sessions Court shall have jurisdiction to try all offences under this Act, except offences under s. 3 or 3A,** and to impose for any offence so tried the full punishment or penalty provided for that offence by this Act, except the penalty of death.
>
> 10(2) Notwithstanding the provisions of subsection (1), the High Court shall have jurisdiction to try any case in respect to any offence under this Act, if the public prosecutor requires 'any such case to be tried by the High Court.
> (Emphasis added)

This section, speaks of two types of cases namely, cases triable by the Sessions Court and cases triable by the High Court. An offence under s. 3 or 3A is, by implication only triable by in the High Court. Section 10(2) confers jurisdiction on the High Court to try any case in respect of any offence under the Act if the public prosecutor requires any such case to be tried by the High Court. Even though s. 10(2) speaks of "any offence under the Act" but on its proper construction, it could only relate to cases triable by the Sessions Court. For, it is superfluous to confer on the public prosecutor a discretion to require a case to be tried in the High Court when the case is, without such a requisition, already triable by the High Court.

Construing s. 11(1) of the Act, in the light of s. 10, it would appear that the requisition under the said s. 11(1) only relate to cases triable by the subordinate Court: it could not, possibly relate to a case under ss. 3 or 3A of the Act, since, such a case is already triable by the High Court by virtue of s. 10(1) of the Act.

In support of the above proposition, it may be useful to refer to the relevant provisions of the Dangerous Drug Act 1952 (DDA), which are in pan materia with s. 11 of the Act. The said provisions are found in s. 41A(1) of the DDA which provides as follows:

> 41A(1) Where any case in respect of an offence under this Act **is triable exclusively by the High Court or is required by the public prosecutor to be tried by the High Court,** the accused person shall be produced before the appropriate Subordinate Court which shall, after the charge has been explained to him, transmit the case to the High Court without holding a preliminary inquiry under Chapter XVII of the Criminal Procedure Code and cause the accused person to appear or be brought before such Court as soon as may be practicable.
> (Emphasis added)

It is pertinent to note that s. 41A(1) of the DDA was enacted at about the same time as s. 11(1) of the Act, and when first enacted they were in exactly similar terms. But, by Act A 553 (with effect from 15 April 1983) s.41A (l) was amended by inserting therein the words "is triable exclusively by the High Court or" immediately after the words "an offence under this Act". This amendment appears to be consequential upon the amendment to s. 39B(2) of the Dangerous Drugs Act, which makes death penalty mandatory for an offence under s. 39B(1) of the Dangerous Drugs Act. So, after the said amendment, s. 41A(1) seems to provide for two types of cases, namely, cases triable exclusively by the High Court and cases triable by the subordinate Court. This view is supported by what was said by Edgar Joseph Jr. J. (as he then was) in *PP v. Oladatun Lukmanu Umaru & Ors.* [1991] 1 MLJ 187, a p. 188:

> Clearly, if s. 41A(1) of the Act is read in isolation, there are two events, namely, when the charge relates to an offence triable exclusively in the High Court or when the public prosecutor requires the Accused to be tried in the High Court, either of which empowers the appropriate Subordinate Court to transmit the case for trial in the High Court.

But as noted by the learned Judge, s. 41A should not be read in isolation. For instance, in respect of an offence under s. 39B(1) of the Dangerous Drugs Act (which is triable exclusively by the High Court) consent of the public prosecutor is required before any prosecution can be instituted. However, is a requisition under s. 41A necessary in respect of a case under s. 39B(1)? I would answer that in the negative. I am of the

view that, such a requisition only applies to cases triable by the subordinate Court which, for some reason, is required by the public prosecutor to be tried by the High Court. So, as can be seen, the Dangerous Drugs Act sets out distinct procedures applicable to - on the one hand, cases triable exclusively by the High Court and on the other hand, cases triable by the subordinate Courts. In contrast, s. 11(1) of the Act makes no reference whatsoever to cases triable exclusively by the High Court.

For the reasons stated above, I am of the view that an offence under s. 3 or 3A of the Act, which is triable exclusively by the High Court, is outside the scope of s. 11(1). Consequently the special provisions relating to transmission of a case to, and trial by, the High Court as provided by the said s. 11, have no application to a case which relates to an offence under s. 3 or 3A of the Act.

It may well be the intention of the legislature, as urged upon me by the learned Deputy Public Prosecutor, to include ss. 3 and 3A within s. 11(1) of the Act. However, it is for the legislature to express the said intention in clear and unambiguous terms, as they had done in the case of the Dangerous Drugs Act. "It is well accepted that beliefs and assumptions of those who frame Acts of Parliament cannot make the law." - (per Lord Morris of Borthy Guest in *Davies v. Davies Jenkins & Co. Ltd.* [1967] 2 WLR 1139 at p. 1156).

For the above reasons, I am of the considered view that the order of the learned President is a nullity for want of jurisdiction. The said order is accordingly quashed and the cases remitted to the Sessions Court to be proceeded with in accordance with the provisions of the Criminal Procedure Code.

PUBLIC PROSECUTOR

v.

CHAN QUEE LONG

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL APPEAL NO. 51-291-92]
26 JUNE 1993

APPEAL: Notice of appeal cannot be served on respondent - Whether s. 314 of the Criminal Procedure Code applies - Two options available to Appellate Court under s. 314 of the Criminal Procedure Code - Whether s. 313(ii) could be invoked "shall be liable" - Whether Court has discretion to award a sentence of imprisonment or to act under s. 294 or s. 173A of the Criminal Procedure Code "shall be punished" - Requirement of Courts to impose imprisonment, even for one day.

SENTENCE: Common Gaming Houses Act 1953 - Section 4A(a) - Respondent pleaded guilty to charge and sentenced to 1 year's imprisonment and fined RM5,000 in default 500 days' imprisonment - Respondent served his imprisonment sentence in full but did not pay fine - Deputy Public Prosecutor appeals against inadequacy of sentence - Powers of Appellate Court - Whether Magistrate had fallen into error.

This was an appeal by the learned Deputy Public Prosecutor against the inadequacy of sentence for an offence under s. 4A(a) of the Common Gaming Houses Act 1953.

Held:

[1] In view of the absent respondent, the Court exercised its powers under s. 314 of the Criminal Procedure Code, dismissed the appeal by the learned Deputy Public Prosecutor and affirmed the sentence imposed on the respondent by the learned Magistrate.

[2] The amended s. 4A(a) of the Common Gaming Houses Act 1953 (Act 289) by employing the words "shall be liable" give the Courts an absolute discretion as to whether it shall award a sentence of imprisonment or impose a fine or if need be, deal with the accused under the provisions of s. 294 or s. 173A of the Criminal Procedure Code. The words "shall be punished" require the Court to impose imprisonment even for one day, according to the circumstances of the case.

[3] In this particular case, the Court had in mind the limitation that "the Court shall not